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4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 ANTHONY D. DAVIS,

7 Petitioner,

8 v.

9 RON HAYNES,

10 Respondent.

Case No. C19-5156-BHS-TLF

ORDER ON MOTIONS

11 Before the Court is petitioner's motion for partial summary judgment (Dkt. 5), "motion to
12 supplement the record based on judicial notice" (Dkt. 7), motion for evidentiary hearing to
13 determine factual findings (Dkt. 8), "motion to supplement" (Dkt. 9), motion for the appointment
14 of counsel (Dkt. 10), motion to determine factual and legal claims (Dkt. 12), motion for relief
15 from judgment (Dkt. 13), motion for exhaustion of state court remedies (Dkt. 17), and
16 petitioner's objections to an extension of time (Dkt. 11). Under separate Order, the Court has
17 directed service of the petition for writ of habeas corpus. The time for respondent to file an
18 answer to the petition has not yet passed. Having carefully reviewed petitioner's motions, the
19 Court **ORDERS** as follows:

20 **A. Motion for Appointment of Counsel**

21 There is no right appointed counsel in cases brought under 28 U.S.C. § 2254 unless an
22 evidentiary hearing is required or such appointment is "necessary for the effective utilization of
23 discovery procedures." *See McCleskey v. Zant*, 499 U.S. 467, 495 (1991); *United States v.*
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1 *Duarte-Higareda*, 68 F.3d 369, 370 (9th Cir. 1995); *United States v. Angelone*, 894 F.2d 1129,
2 1130 (9th Cir. 1990); *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983); Rules Governing
3 Section 2254 Cases in the United States District Courts 6(a) and 8(c). The Court may appoint
4 counsel “at any stage of the case if the interest of justice so require.” *Weygandt*, 718 F.2d at 754.
5 In deciding whether to appoint counsel, the Court “must evaluate the likelihood of success on
6 the merits as well as the ability of the petitioner to articulate his claims pro se in light of the
7 complexity of the legal issues involved.” *Id.*

8 Here, the Court directed service of the petition and the time for filing an answer has not
9 run. As an answer has not been filed, the Court does not find good cause for granting leave to
10 conduct discovery and is not yet able to determine whether an evidentiary hearing will be
11 required. *See* Rules Governing Section 2254 Cases in the United States District Courts 6(a) and
12 8(c). Furthermore, petitioner effectively articulated his grounds for relief raised in the petition,
13 the grounds do not, at this point, appear to be factually or legally complex, and it is difficult to
14 determine the likelihood of success on the merits without an answer and the state court record.
15 *See* Dkt. 6. Thus, petitioner has not shown the interest of justice requires the Court to appoint
16 counsel at this stage in the case.

17 As petitioner has not shown appointment of counsel is appropriate at this time, the
18 motion for the appointment of counsel (Dkt. 10) is denied without prejudice.

19 **B. Motions for: Evidentiary Hearing, Partial Summary Judgment, Relief from**
20 **Judgment, Exhaustion of State Court Remedies (Dkt. 17), to Determine Factual and**
21 **Legal Claims, and to Supplement the Record**

22 Petitioner has also filed motions seeking partial summary judgment (Dkt. 5), for an
23 evidentiary hearing (Dkt. 8), to determine factual and legal claims (Dkt. 12), for relief from
24 judgment (Dkt. 13), and for exhaustion of state court remedies (Dkt. 17). Petitioner has also filed
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1 a “motion to supplement” (Dkt. 9) which seeks to add arguments in support of his motion for an
2 evidentiary hearing. Petitioner has also filed a “motion to supplement the record based on
3 judicial notice” (Dkt. 7) asking that the Court “look at the entire record of his 1995 plea hearing
4 transcript” and indicating this is a document the “respondent should provide to this Court.” Dkt.
5 7.

6 Petitioner’s motions for partial summary judgment, to determine factual and legal claims,
7 for relief from judgment, and for exhaustion of state court remedies, appear to seek findings on
8 dispositive issues related to the ultimate determination of his petition. Dkts. 5, 12, 13, 17. As the
9 respondent has not answered the petitioner and the state court record has not been supplied to the
10 court to review the procedural aspects of the case or the merits of petitioner’s claims for relief, it
11 is premature for the Court to consider these motions at this time. The ultimate relief sought
12 cannot be determined without proper development of the record and review of the state court
13 records

14 Likewise, it is premature for the Court to consider petitioner’s request for an evidentiary
15 hearing (Dkt. 8), “to supplement” to include additional arguments for an evidentiary hearing
16 (Dkt. 9), or “to supplement the record based on judicial notice” (Dkt. 7) at this stage. The
17 respondents have not yet filed the state court record so the Court cannot yet determine whether
18 supplementation is necessary, and the record has not otherwise been developed sufficiently for
19 the Court to determine whether an evidentiary hearing is necessary.

20 Accordingly, the Court directs the Clerk to **re-note these motions (Dkts. 5, 7, 8, 9, 12,**
21 **13, 17) for consideration to July 5, 2019.** The respondent is directed to file a response to these
22 motions **on or before June 21, 2019**, and plaintiff may file a reply **on or before July 5, 2019.**

23 C. Objections to Extension of Time

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Petitioner has also filed a document entitled “objections to any extension of time that may be filed by respondent” (Dkt. 11). However, because the Court has just ordered service of the petition and the respondent has 45 days from the date of service to file an answer, petitioner’s request is premature at this time. Accordingly, the Clerk is directed to strike petitioner’s “objection” (Dkt. 11) from the docket.

Dated this 25th day of April, 2019.

Theresa L. Friske

Theresa L. Fricke
United States Magistrate Judge